89-552

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

RICHARD WILKERSON, EDGAR FERRELL, FRANK ALICIA, TOM WILLIAMS, DANNY SOGLIUZZO and NICHOLAS TALLERICO,

Petitioners,

vs.

SEAWALL ASSOCIATES, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

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QUESTION PRESENTED

Whether a municipality's effort to preserve a scarce and unique form of rental housing in order to prevent the dislocation and ultimate homelessness of many poor single adult tenants, by imposing a temporary ban on conversion or destruction of such buildings and requiring owners to offer vacant rooms for rent, can withstand a takings challenge by commercial real estate developers who wish to redevelop the properties.

LIST OF PARTIES

Petitioners, defendant-intervenors below, are Richard Wilkerson, Edgar Ferrell, Frank Alicia, Tom Williams, Danny Sogliuzzo and Nicholas Tallerico, individual tenants who live in SRO buildings which are owned by petitioners Seawall Associates and 459 West 43rd Street Corporation. The tenants intervened as defendants below.

Also petitioners, but not joining this petition for certiorari, are the Coalition for the Homeless which intervened as a defendant below and the City of New York, Edward I. Koch in his capacity as Mayor of the City of New York, Abraham Biderman in his capacity as Commissioner

of the Department of Housing Preservation and Development of the City of New York[1] and Charles Smith in his capacity as Commissioner of the Department of Buildings of the City of New York, defendants below.

Respondents, plaintiffs below, are Seawall Associates, 459 West 43rd Street Corporation, Eastern Pork Products Company, Durst Partners, Sutton East Associates-86 Channel Club and ANBE Realty Co.

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[1] Former Commissioner Paul Crotty was originally named in the caption.

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RICHARD WILKERSON, EDGAR FERRELL,
FRANK ALICIA, TOM WILLIAMS,
DANNY SOGLIUZZO and
NICHOLAS TALLERICO,

Petitioners,

-against-

SEAWALL ASSOCIATES, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

The petitioner tenants, intervenor-defendants in the proceedings below, respectfully pray that a writ of certiora-

ri issue to review the judgment and opinion of the New York Court of Appeals entered in this case on July 6, 1989.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

1. New York City Local Law 9, which was declared unconstitutional by the New York State Court of Appeals, is reprinted in the Appendix at A-253.[1] It is codified in the New York City Administrative Code §§ 27-198.2-198.3, 27-2150-53.

2. The Constitution of the United States provides in pertinent part:

AMENDMENT V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

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[1] Citations preceded by "A" refer to the Appendix to the Petition for Certiorari which was submitted by petitioner City of New York. Citations preceded by "R" refer to the Record on Appeal filed in the Court of Appeals. Citations preceded by "SR" refer to the Supplemental Record in the Court of Appeals.

indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Local Law 9 was enacted by New York's City Council in 1987. It is designed as a temporary measure, to preserve the homes of approximately 52,000 New Yorkers living in so-called Single Room

Occupancy ("SRO") residences.[2] The people who live in these buildings are low income single adults for whom no other permanent low income housing exists in New York City. They are, overwhelmingly, elderly, emotionally or physically impaired, and minority. Experience has shown that without Local Law 9, many SRO residents will be forced into homelessness. Local Law 9 therefore provides a temporary five year ban on the demolition or conversion of

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[2] SROs are dwelling units which do not contain private bathroom and/or cooking facilities. Residents of SROs share these facilities with neighbors. Use of common kitchens and bathrooms creates community living which is salutary to the frail and isolated SRO population. Twenty-five percent of SRO residents are sixty years or older. Many SRO tenants who have no traditional ties to family, church or community groups are sustained by relationships they form in SROs. In addition, some SROs have on-site social service providers who assist residents. (R177-78, 683, 710). SROs are found in rooming houses, hotels and apartment buildings.

SROs, along with a requirement that vacant rooms be rented. Under the law, all SRO landlords are guaranteed a reasonable rate of return on their investment. In addition, the law contains a variety of exceptions, including a financial hardship provision.[3]

This law suit was begun in 1987 by five commercial real estate developers in Manhattan who wished to demolish or convert their buildings to luxury offices

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[3] The consequent homelessness which results from the loss of SRO housing for low income single adults is reflected in the number of former SRO tenants who are counted among the occupants of city shelters. One study conducted by the City of New York Human Resources Administration in 1980 reported that 45% of the men shelter residents surveyed lived in an SRO at least part time. While the percentage varies in later studies, each reveals a correlation between the destruction of SROs and homelessness of single adults.

or residences.[4] In 1988, the Appellate Division of New York State Supreme Court unanimously upheld the law's constitutionality. In 1989, that decision was reversed by the New York Court of Appeals, which held that, Local Law 9 unconstitutionally "takes" property without affording its owners just compensation in violation of the United States constitution.[5]

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[4] Three of these developers have sold their buildings during the proceedings in the State Courts. One, Testamentum, did not join in the Appeal to the Court of Appeals; 75% of Seawall Associates was acquired by its current owner in December, 1988; ANBE sold its property in April, 1989.

[5] The Court of Appeals held that "Local Law No. 9 is facially invalid as both a physical and regulatory taking in violation of the federal and state constitutions and we, therefore, declare it null and void." (A3). A copy of the Court's opinion, which has not yet been reported, appears in the appendix at (A1).

HISTORY OF LOCAL LAW 9

Local Law 9 is a carefully crafted response to the continued displacement of vulnerable tenants caused by the dramatic diminution of SRO housing in New York City over the last fifteen years.[6] The law is not a proposed cure for New York's homeless crisis. It is an emergency and temporary regulation designed to protect people in their homes and to prevent more homelessness in New York City while steps are taken to provide new alternative SRO housing for needy tenants. As such, it is a creative, albeit narrow attempt, by local government to deal with a major human and social tragedy of this decade.

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[6] It has been estimated that some 104,000 rooms -- homes -- have been lost in New York. (R692).

The current crisis in SRO housing had its inception in the late 1960s when city officials concluded that SROs were a substandard form of housing unsuitable for modern urban living. Without anticipating the consequences, the City enacted laws which prevented landlords from building new SROs. It also encouraged conversion and demolition of existing SROs by offering tax benefits to owners who "upgraded" their buildings. This new opportunity for speculative gain on SRO properties created incentives for removal of SRO tenants. Lawlessness and often violence have led to the imposition of fines, and the imprisonment of several landlords for harassing tenants into abandoning their homes. (R207-213, 225).

By 1980, it had become apparent that the destruction of the SRO housing stock was having the unintended effect of

creating a substantial single adult homeless population. It also became evident that SRO tenants were being driven out of their homes by absentee corporate owners of multiple dwellings who sought financial gain without considering its human costs.

In the early and mid-1980's, the city then began a series of administrative and legislative initiatives to respond to the crisis created by the ongoing loss of SRO housing. These efforts culminated in the adoption of Local Law 9.[7] For present

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[7] In 1982, the City Council funded a special housing unit of the Manhattan District Attorney's Office and enacted the Illegal Eviction law which imposes criminal sanctions on landlords who put tenants out of their homes without legal process (N.Y.C. Admin. Code § 26-521). In 1983 the anti-harrassment law was passed. It denies alteration and demolition permits to SRO landlords if they harassed tenants within the three years prior to applying for such permits. (N.Y.C. Admin. Code § 27-198). Then in 1985 a temporary moratorium law was promulgated while a study was undertaken to assess the crisis in SRO housing.

purposes, it is sufficient to note that Local Law 9 was enacted only after prior efforts, including existing tenant protection laws, had proved inadequate to halt the destruction of SRO housing. Given these deficiencies, a study report commissioned by the New York City Council[8] in 1985 concluded that "further conversion of single room properties can no longer be neutrally regarded." (R688). It recommended that the City act quickly to ensure that SRO housing is preserved and expanded and it specifically recommended that the ban on conversion and destruction be extended. (R680).

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[8] The report Blackburn, Single Room Occupancy in New York City (Jan. 1986) was issued following a study by Urban Systems Research and Engineering, Inc. (R673-808).

SCOPE OF LOCAL LAW 9

Local Law 9 preserves most SROs for a period of five years[9] and requires most owners to make empty rooms available to the public for rental.[10] Some buildings are exempt from Local Law 9's requirements. For example, small buildings (24 units or less) which owners use, or intend to use, as their homes are not covered by the Law.[11] Also exempt are:

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9 N.Y.C. Admin. Code § 27-198.2.

10 N.Y.C. Admin. Code § 27-2150-2152. Experience has shown that buildings which are permitted to remain partially unoccupied deteriorate in condition rapidly as services are withdrawn by owners who hope to drive the remaining tenants out. These nearly empty buildings often become the target for crime which creates a frightening living situation and provides the impetus for remaining tenants to flee. (R225, 227).

11 The New York City Council was sensitive to the need for protecting people in their homes. By exempting small owner-occupied buildings, it focused its restrictions on

(Footnote continued)

long vacant buildings, government owned buildings which are not subject to market forces, buildings which are part of a government approved project for rehabilitation and preservation of SROs and luxury tourist hotels. Additionally, owners of buildings which are governed by the Law's provisions may obtain exemptions by utilizing its options to "buy-out" or provide replacement housing.[12] The buy-out provides for payment to an SRO Housing Development Fund Company in an amount which is

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(Footnote 11 continued from previous page) speculative commercial enterprises owned by sophisticated developers who knowingly bought into a highly regulated industry.

12 The Court below discounted these options and ruled that the law is facially unconstitutional, notwithstanding the fact that they are clearly viable as demonstrated by the fact that while this action has been pending at least three owners of regulated SROs have utilized the "buy-out" option to withdraw units. In fact, one of the properties was developed by the now controlling partner of Seawall Associates.

equal to the cost of creating a replacement unit. Finally, if the requirements of Local Law 9 make it impossible for an owner to earn a reasonable rate of return she/he may apply for a hardship exemption which may entitle the owner to partial, or complete relief.[13]

PROCEEDINGS IN THE LOWER COURTS

Local Law 22 (a predecessor to Local Law 9) was enacted in 1986. Before its provisions became effective, plaintiffs challenged its constitutionality in the New York State Supreme Court where they sought preliminary injunctive

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[13] The Law's hardship provision established the same standard for relief that is employed in the New York City Rent Control Law. That standard withstood constitutional challenge in Benson Realty Corp. v. Beame, 50 N.Y.2d 994, 409 N.E.2d 948 (1980) appeal dismissed, 449 U.S. 1119 (1981).

relief.[14] Without holding an evidentiary hearing on contested issues of fact, a justice of that court ruled that the Law's anti-warehousing provisions effected an unconstitutional taking of the owners' property. Seawall Associates v. City of New York, 134 Misc.2d 187 (Sup. Ct., N.Y. Co., 1986). Local Law 9, the subject of the instant petition, was enacted in March, 1987, at about the same time as the Order was being settled in the original action. Plaintiffs were invited by the Court to amend their initial complaints to include a new cause of action seeking to enjoin Local Law 9. Plaintiffs submitted amended complaints to the Court.

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[14] An action was commenced against the City of New York and certain of its officials by commercial real estate developers. Individual SRO tenants and the Coalition for the Homeless immediately sought, and were granted, permission to intervene on behalf of the defendants.

The State Supreme Court, sua sponte and without notice to the parties, converted plaintiffs' prayer for preliminary relief to one for summary judgment. Again, ignoring disputed facts in the record regarding the economics of maintaining an SRO, the cost of rehabilitating vacant rooms, the potential for sale or the viability of the buy-out options, the Court granted summary judgment to plaintiffs and ruled that Local Law 9 is invalid on its face.[15] Consequently, no inquiry was undertaken and no determination was made with regard to the Law's impact on individual properties. The Court found that Local Law 9 violated the takings clauses of the 5th and 14th Amendments to

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15 Seawall Associates v. The City of New York, 138 Misc.2d 96 (Sup. Ct., N.Y. Co., 1987). It is reprinted at (A165).

the United States Constitution. It ruled that the Law's new ameliorative replacement and hardship provisions did not cure the defects previously noted in Local Law 22 but actually made the instant Law more onerous. The Court rejected plaintiffs' regulatory and environmental causes of action.

An Appeal was taken to the Appellate Division, First Department of the New York State Supreme Court. Reversing the decision below, the appellate court ruled unanimously, on December 3, 1988, that Local Law 9 is "constitutional in all respects."[16] The Court reasoned that the law is a valid local regulation of the use of commercial housing properties, imposed

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16 Seawall Associates v. The City of New York, 142 A.D.2d 72 (1st Dept., 1988). It is reprinted at (A107).

for an important public purpose--and that as such, it constitutes neither a violation of the due process rights of SRO owners, nor a "taking" of their property without compensation. The Appellate Division observed that such regulations to forestall harm to the community have long been recognized as a valid exercise of the police power. (A151). It further found that the lawful regulation does not infringe upon property rights so as to constitute a compensable taking, since economically viable use is assured under the statute. (A158-9). The Court also rejected plaintiffs' regulatory and environmental claims as being without merit.

In a 5-2 opinion, issued on July 6, 1989, the New York State Court of Appeals reversed the Appellate Division. The majority held that Local Law 9 represents both a physical and regulatory "tak-

ing", (A3) without just compensation in violation of the Fifth Amendment. The Court also found that Local Law 9 denies owners an economically viable use of their property and does not advance a legitimate state interest.

In a strongly worded dissent Judge Joseph Bellacosa, joined by Chief Judge Sol Wachtler, noted that no prior cases have used the regulatory taking theory to undo a legislative act on a facial attack. Pointing to the lack of concrete facts in the record of this pre-enforcement facial challenge he observed that "[t]here is no way of knowing on this record the extent to which landlords are economically affected or how profitable the dwelling units might be." (A85-6). Moreover, the dissent concluded that the law does not effect a physical taking "because on its face it is not permanent

in its individual application or in its limited five year duration." (A91).

REASONS FOR GRANTING THE WRIT

There is no doubt that homelessness represents one of the greatest problems facing the nation today. The decision below not only jeopardizes the homes of 52,000 New Yorkers living in SRO's, including petitioners, it also threatens to chill the efforts of other localities struggling to develop innovative solutions to the loss of affordable housing in our urban centers. The results, tragic by any terms, was also based on a fundamental misunderstanding of this Court's decisions construing the takings clause of the Fifth Amendment.

The individual petitioners incorporate by reference the City of New York's argument relating to independent

and adequate state grounds. They adopt the points advanced by petitioner Coalition for the Homeless regarding the doctrine of taking by physical intrusion onto property by a stranger. Petitioners note, moreover, this Court's consistent solicitous protection of the sanctity of the home in such other contexts as those before the court in Payton v. New York, 445 U.S.573 (1980) (Warrant required for routine arrest at home); Stanley v. Georgia, 394 U.S. 557 (1969) (right to read pornography in the privacy of one's home). The lower court inappropriately applied that concern here to the plaintiffs' businesses and glossed over the purpose of the law -- to protect the homes of poor single people.

I. CONTRARY TO THE DECISIONS OF THIS COURT, THE COURT OF APPEALS TOOK THE EXTRAORDINARY STEP OF USING A REGULATORY TAKING THEORY TO INVALIDATE A STATUTE ON A FACIAL CHALLENGE

A statute effects a taking only if it "denies an owner economically viable use of his land." Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 494-95 (1987).

This court has never struck down a statute as facially inconsistent with the takings clause when challenged on a regulatory taking theory. To the contrary, this Court has repeatedly cautioned that in takings cases "the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary." Pennell v. City of San Jose, 108 S.Ct. 849, 856 (1988) (citing Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc., 452 U.S.

264, 294-95 (1981)). This "ad hoc, factual inquir[y]" is made by examining the extent of the economic loss suffered as a result of the passage of the challeged restriction. Virginia Surface Mining, 952 U.S. at 295. Where a statute or regulation is challenged on its face the only issue properly before the court is "whether the 'mere enactment' of the [regulation]," Keystone, 480 U.S. at 494-95, has denied an owner economically viable use of the property.

For a court to find a law constitutionally infirm on a facial challenge, it must be shown that there is no set of facts in which the law could be constitutionally applied. United States v. Salerno, 481 U.S. 739, 745 (1987). This showing was not made. Only those owners who believe there are more profitable uses for their properties are before

the Court. Absent inquiry into the relevant factors, including the state of the rental market and the particular circumstances of other SROs, there was no foundation to support the conjectures made by the Court of Appeals with regard to the universe of New York City's diverse SRO owners.

Although such a challenge was brought here, the Court of Appeals had no basis on which to determine that Local Law 9 destroyed the economic value of the developers' properties, let alone the effect of the law on the entire class of SRO owners. As the dissent in the Court of Appeals pointed out, (A72) the majority had no way of knowing without the benefit of a well-developed record -- which was foreclosed by the erroneous action of the New York State Supreme Court in converting this proceeding to one for summary judg-

ment without notice to the parties -- whether respondents or other SRO owners had purchased their properties for use as SRO's or other speculative purposes. Rather than follow the many precedents of this Court, the Court of Appeals presumed the facts alleged by respondents, and contested by petitioners, to be true although no hearing was held to make such factual findings, and then extrapolated from respondents to the entire class of SRO landlords.

Had petitioners been accorded the opportunity to make a factual record, they would have sought (and still seek) to prove the existence of a vigorous market in SRO properties that has functioned throughout the life of the moratorium provisions of Local Law 9 and its prede-

cessors, (R191)[17] the profitability of numerous SRO buildings in which the lower floors are leased to various commercial tenants and the extent to which the general public is invited into these commercial premises, or the cost of rehabilitation.

The ad hoc factual inquiry must gauge the extent of the challenged statute's interference with reasonable investment-backed expectations. Keystone, 480 U.S. at 495, 499; Virginia Surface Mining, 452 U.S. at 295; Kaiser Aetna v. United States, 444 U.S. 164, 175 (1979); Penn Central Transportation Co. v. New York City, 438 U.S. 104, (1978), which, by their very nature, are individualized.

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[17] At least 10 buildings representing 2,200 units have changed hands since the inception of the moratorium. Were this proceeding to be remanded, it could now be shown that three of the original plaintiffs have transferred their properties.

Ignoring both the inquiry required by this Court and the undeveloped state of the record, the Court of Appeals erroneously concluded that no private investor would wish to run a building as a SRO. (A36). Depending on when during the different phases of New York City's changing SRO policy the property was acquired and the then prevailing market conditions, its location, zoning, size and condition, the owners of SRO properties may hold very different, but still reasonable, investment-backed expectations. It cannot be presumed that the long-time owner of a small rooming house in one of the City's outlying boroughs will see eye to eye with the newer owners of large hotel properties situated, for example, on prime midtown Manhattan corners. But without individualized, developed factual findings which reflect the unique circumstances of each

property, no owner's expectations can be taken for granted.

None of the respondents took advantage of the hardship provisions of Local Law 9, although each complained of its burdensome impact. Unless they do so, it is impossible to ascertain what impact the law will have on each of them. If they are dissatisfied with the administrative outcome, they are free to challenge Local Law 9 as applied to them on a fully developed record. Virginia Surface Mining, 452 U.S. at 297.

II. THE COURT OF APPEALS DID NOT CORRECTLY APPLY THE NEXUS TEST OF NOLLAN V. CALIFORNIA COASTAL COMM'N.

In Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987), this Court held that a law "does not effect a taking if it 'substantially advance[s] legitimate state interests'" Id. at 834; Keystone 480

U.S. at 485. The preamble to Local Laws 1 and 9 sets forth the law's most important purpose:... to stem the tide of conversion of single room occupancy multiple dwellings.... (A317). Rather than focus on this stated rationale, the Court of Appeals misunderstood the raison d'etre of Local Law 9 to be limited to the alleviation of current homelessness, and, in so doing found that the effect of the law on its intended beneficiaries was questionable. (A44-52).

The goal of Local Law 9 is to protect those structures currently standing and the tenancies in those structures. The moratorium §27-198.2-198.3, (A253-290), serves this end by removing the incentive for owners to empty their buildings and terminate current tenancies through legitimate or extra-legal means. Because the rooms cannot immediately be

demolished or put to other uses, there will be less pressure put on tenants to vacate their homes. Similarly, an SRO fully tenanted and repaired pursuant to the anti-warehousing provision of Local Law 9, §27-2151-2153, (A298-301) presents a safer and more attractive alternative to current tenants than a half-empty and dilapidated building frequented by drug dealers from which frightened tenants may flee or be bought out for a pittance, (R178, 189-90, 208-12, 222-38), leaving their owners to wait out the moratorium with an increasingly emptier SRO.

Had the Court of Appeals applied Nollan to the purpose of the Local Law 9, instead of rewriting the City Council's declaration of findings and intent, the relationship between end and chosen means would be clear and substantial.

III. LOCAL TEMPORARY INITIATIVES TO STEM THE NATIONAL EMERGENCY CREATED BY THE LOSS OF LOW INCOME HOUSING HAVE CONSISTENTLY SURVIVED CONSTITUTIONAL CHALLENGES

Destruction of low income housing and the resulting homelessness of former tenants is a recent phenomenon which plagues cities across the country. Municipalities have begun to respond to the emergency created by the diminution of affordable housing by enacting local regulations which are, of necessity, geared to their own special needs. New York City reacted to the disproportionate loss of its SRO housing by promulgating a local law which preserves them temporarily and requires owners to offer empty rooms for rental. Viewing the law narrowly, New York's highest court ruled it unconstitutional and second-guessed New York City Council's assessment of the pressing need for the law.

Similar low income rental housing preservation laws which were enacted by localities in California, New Jersey and Massachusetts withstood challenges by property owners and have been ruled constitutional. In Terminal Plaza Corp. v. City and County of San Francisco, 223 Cal. Rptr. 379, 177 Cal. App.3d 892 (Cal. App. 1986), a moratorium strikingly similar to Local Law 9 was upheld by a California appellate court. Like Local Law 9, it placed a moratorium on the demolition or conversion of residential hotel units, requiring as a condition to the conversion of units either their replacement in kind, or contribution of an "in lieu" fee to a residential hotel preservation fund. 223 Cal. Rptr. at 381. The California Court rejected the claim that the ordinance unconstitutionally infringed on an owner's right to cease doing business.

A Santa Monica, California regulation which severely limited a landowner's right to evict tenants and demolish low income housing was upheld by the state's highest court against a constitutional challenge. Nash v. City of Santa Monica, 37 Cal.3d 97, 207 Cal. Rptr. 285, 688 P.2d 894 (Cal. 1984). The California Supreme Court, noting the shortage of low income rental housing in Santa Monica, ruled that the provision which protected existing tenancies against eviction did not deprive an owner of property in violation of her due process rights.

A New Jersey municipal law requiring landlords to rent out dwelling units has been upheld recently against constitutional challenge. Help Hoboken Housing v. City of Hoboken, 650 F.Supp. 793 (D.N.J. 1986). In the Hoboken case, property owners challenged an ordinance

which requires owners to have vacant units rented and occupied within 60 days of the end of the preceding tenancy. The owner could seek a temporary waiver in the event that it was necessary to bring the unit up to code. See also Troy v. Renna, 727 F.2d 287 (3d Cir. 1984), wherein a regulation protecting certain tenancies for as long as 40 years was upheld.

Massachusetts' highest court has also deferred to a local legislative initiative to preserve its dwindling supply of rental housing. The ordinance at issue there regulated eviction from, and conversion of, housing protected by Cambridge's rent control law. While the ordinance did not bar landlords from converting certain rental units to condominiums, it did require those units to continue to be used as rental housing. Flynn v. City of Cambridge, 418 N.E.2d 335 (Mass. 1981).

Local Law 9 should be reviewed by this court in its proper context--i.e., as a preservation law enacted for a temporary period by a local government to meet its unique crisis in a particular kind of affordable rental housing. It, together with the other local initiatives discussed above is intended to stem the decline of rental housing for the poor, during a national crisis and until adequate long-term solutions are developed.

CONCLUSION

For all the foregoing reasons, this Court should grant a Writ of Certiorari.

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